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Before the

Federal Communications Commission
Office of the Secretary

Federal Communications Commission

Washington, D.C. 20554

In re Applications of)

William K. Durst and)

William L. Faircloth)

d/b/a **LEXCO RADIO**)

South Congaree, S. C.)

File No. BPH-910228MB

ALEXANDER SNIPE, JR.)

South Congaree, S. C.)

File No. BPH-910228MC

For Construction Permit for a)

New FM Broadcast Station to)

Operate on Ch. No. 237A at)

South Congaree, S. C.)

To: Chief, Audio Services Division
Mass Media Bureau

JOINT REQUEST FOR
1. APPROVAL OF SETTLEMENT AGREEMENT,
2. APPROVAL OF REIMBURSEMENT OF EXPENSES
AND
2. DISMISSAL OF COMPETING APPLICATION

William K. Durst and William L. Faircloth, d/b/a Lexco Radio (hereinafter, "Lexco"), by its counsel, and Alexander Snipe, Jr. (hereinafter, "Snipe"), pursuant to Section 73.3525(a) of the Commission's Rules, respectfully request that the Chief, Audio Services Division, Mass Media Bureau, take following actions:

- (1) Approve the settlement reached by and between Lexco and Snipe, as set forth in the attached "Settlement Agreement", etc. (Attachment 1)

(hereinafter, "Settlement Agreement");

- (2) Authorize reimbursement of the expenses of Lexco in the preparation and prosecution of its application, and in negotiating and filing the Settlement Agreement and related documents, in the amount of \$9,734.63, and
- (3) Dismiss the application of Lexco.

In support whereof, Lexco and Snipe state as follows:

1. The applications of Lexco and Snipe propose new FM broadcast stations to operate on the same FM channel at South Congaree, S. C.. Being electrically mutually exclusive, in the normal course the applications would be required to be designated for hearing to determine which one of them should be granted and which denied. They have agreed to settle and eliminate that conflict pursuant to the Settlement Agreement (Attachment 1).

2. Attachments 2 and 3 are the requisite Declarations by Lexco and Snipe (1) attesting that neither of their applications was filed for the purpose of reaching or consummating a settlement agreement and (2) stating reasons showing that approval of the Settlement Agreement (Attachment 1) and effectuation thereof would serve the public interest. As stated in those Declarations, the Settlement Agreement will serve the public interest in that, upon effectuation, it will simplify hearing on the application of Snipe and the remaining mutually exclusive application

for the FM channel at South Congaree,¹ minimizing the cost thereof to the applicants and the Commission.² In addition, the settlement will expedite the hearing proceeding between the remaining two applicants for the South Congaree FM channel and the provision of a new broadcast service there.³

3. Authorization also is requested for the reimbursement by Snipe (in the event of grant of his application and at the time and on the conditions in the Settlement agreement set forth) of the expenses of Lexco in the preparation and prosecution of its application, and in negotiation of the Settlement Agreement and preparation and filing of the Settlement Agreement and related documents, in the amount of \$9,743.63.⁴ Attachment 2 lists the costs reasonably and prudently incurred by Lexco in these matters and is supported by the attached declarations of its consulting engineer and legal counsel respecting their charges.

¹ The remaining mutually exclusive application is that of Valentine Communications, Inc., File No. BPH-910228MD.

² It would appear that approval of the Settlement Agreement also would conserve the expenditure of Commission resources in that it should eliminate the need for detailed processing by the Commission's staff of the Lexco application.

³ Dismissal of the application of Lexco raises no question under Sec. 73.3535(c) of the Rules, relating to prejudice to the fair, efficient and equitable distribution of radio service, since the remaining applications are for stations at the same place.

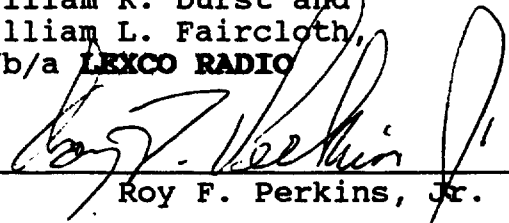
⁴ This is exclusive of the hearing fee paid in the amount of \$6,760, which Lexco will request be refunded by the Commission.

4. Lastly, there is attached a Declaration of "no consideration" by William K. Durst, a partner of Lexco (Attachment 4), respecting the other mutually exclusive applicant, Valentine Communications, Inc. (File No. BPH-910228MD).

WHEREFORE, Lexco Radio and Alexander Snipe, Jr., respectfully submit that good cause has been shown for approval of the Settlement Agreement, authorization for reimbursement of the expenses of Lexco in the amount of \$9,734.63, and dismissal of the application of Lexco.

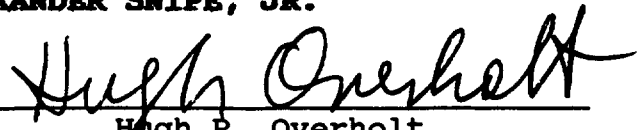
Respectfully submitted,

William K. Durst and
William L. Faircloth,
d/b/a **LEXCO RADIO**



Roy F. Perkins, Jr.
1724 Whitewood Lane
Herndon, Virginia 22070
Their Attorney

ALEXANDER SNIPE, JR.



Hugh R. Overholt
Maupin, Taylor, Ellis & Adams
1130 Connecticut Ave., N. W.
Suite 750
Washington, D. C. 20036

February 4, 1992

SETTLEMENT AGREEMENT
FOR
DISMISSAL OF COMPETING APPLICATION

THIS AGREEMENT, by and between Alexander Snipe, Jr., on the one hand, and William K. Durst and William L. Faircloth, on the other (hereinafter, "Settlement Agreement").

W I T N E S S E T H:

WHEREAS, Alexander Snipe, Jr., d/b/a Glory Communications (hereinafter, "Snipe"), on the one hand, and William K. Durst and William L. Faircloth, d/b/a Lexco Radio (hereinafter, "Lexco"), on the other, have applications pending before the Federal Communications Commission (hereinafter, "Commission") for construction permit for a new frequency modulation (FM) broadcast station to operate at South Congaree, South Carolina (hereinafter, "South Congaree"), under File Nos. BPH-910228MC and BPH-910228MB, respectively;

WHEREAS, the foregoing applications of Snipe and Lexco, together with one other application, are for the same FM channel at South Congaree and, as a result, are mutually exclusive under the rules of the Commission such that only one of them can be granted and, accordingly, pursuant to the Communications Act of 1934, as amended, the three mutually exclusive applications must be designated for evidentiary hearing to determine which one of them should be granted and which denied, and

WHEREAS, Snipe and Lexco believe that it would serve the public interest to settle and terminate the aforesaid conflict insofar as it involves them, thereby reducing the expense and burden to the remaining applicants for the FM channel at South Congaree and to the Commission of evidentiary hearing proceedings, as well as expediting the provision of a new local broadcast service to South Congaree.

NOW, THEREFORE, IT IS AGREED AND CONTRACTED, by and between Snipe and Lexco, in consideration of their several promises and undertakings hereinafter set forth, the parties intending to be legally bound, as follows:

1. **Commission Approval.** This Settlement Agreement is subject to the prior approval of the Commission and will not be effectuated until such approval has been received.

2. **Request for Dismissal of Application.** Lexco will request dismissal of its application. This undertaking is unconditional and severable from the provisions for reimbursement stated in paragraph 3, infra, in the event the Commission should disapprove the provisions of the said paragraph 3 in whole or in part (including approval of less than the full amount of reimbursement to be paid), provided, that Lexco shall have the unrestricted right to file all documents and representations, to the best of its ability, to meet any question or objection by the Commission relating to the provisions of the said paragraph 3.

3. Reimbursement to Lexco. In the event, and subject to the following conditions precedent occurring:

(a) A Final Order (as hereinafter defined) of the Commission approving this Settlement Agreement and dismissing the application of Lexco;

(b) A Final Order granting the application of Snipe for construction permit for an FM broadcast station to operate on an FM channel assigned to South Congaree (hereinafter, "Station"), and

(c) The filing by Snipe with the Commission of a license application (under Commission Form 302) for Station or the assignment of the construction permit for Station to any person or entity not meeting the definition of "Snipe" set forth infra in this paragraph,

Snipe will pay to Durst and Faircloth the sum of Ten Thousand Dollars (\$10,000.00), or such part thereof as is authorized by the Commission as reimbursement of Lexco's expenses incurred in the preparation and prosecution of its application and in the preparation and filing of this Settlement Agreement. "Snipe" as used in subparagraphs (b) and (c), supra, includes any entity in which Snipe holds any ownership interest or has the right or obligation to acquire an ownership interest; it also includes an individual person or persons as to whom Snipe has the right to require formation of an entity in which he may or will hold an ownership interest.

4. Payment of Reimbursement. Payment by Snipe pursuant to paragraph 3, supra, will be due:

(a) On the ninetyfirst (91st) day after the day on which the Station (as defined in paragraph 3, supra) commences operation for program tests (as defined in the rules of the Commission) or the ninetyfirst (91st) day after the license application (Commission Form 302) for said Station is filed with the Commission, whichever is earlier, or

(b) Should the construction permit for Station be assigned or transferred prior to occurrence of the payment date pursuant to subparagraph (a), supra, to any person or entity not meeting the definition of "Snipe" set forth in paragraph 3, supra, on the day of such assignment.

5. Request for Commission Approval.

(a) Within five (5) days after entry into effect of this Settlement Agreement, the parties will file it with the Commission, together with a joint request for its approval (including approval of the reimbursement of expenses agreed in paragraph 3, supra).

(b) The costs of preparing this Settlement Agreement and the joint request pursuant to subparagraph (a), supra, (other than the costs of preparation of documents required from Snipe and of review and other actions of counsel to Snipe desired by Snipe) shall be born by Lexco. Each party promptly will provide at his or its expense information and documents pertaining to him or it which, from time to time, may be requested by the Commis-

sion, or necessary or appropriate to expeditiously securing the actions, by Final Order, by the Commission pursuant to paragraphs 2 and 3, supra.

6. Reconsideration, Review or Appeal by the Parties.

Neither party is obliged to file or join in the prosecution of any request for reconsideration, review or appeal, or to actively oppose reconsideration, review or appeal, or actively participate in any such proceeding. Each party, however, will cooperate in such action by the other party directed to securing approval of this Settlement Agreement and the actions contemplated by paragraphs 2 and 3, supra, by Final Order.

7. Definitions. "Order" means a written authorization, determination, denial, grant, ruling or other action by the Commission. Order includes multiple orders relating to related subjects. Commission includes persons acting for the Commission by delegated authority. "Final Order" means an Order with respect to which the time for any and all requests for reconsideration, review or appeal, and for reconsideration or review by the Commission on its own motion, has expired. The definitions in this paragraph are in addition to other definitions stated elsewhere in this Settlement Agreement.

8. Notices and Communications. Any notification or communication relating to this Settlement Agreement shall be deemed given when delivered in writing, addressed as follows, at the address specified below, or when deposited in the U. S. Mail,

first class, return receipt requested, addressed as follows.

IF TO SNIPE: Alexander Snipe, Jr.
820 Royal Tower Drive
Irmo, S. C. 29063

IF TO LEXCO: William K. Durst
Route 1, Box 22
Saluda, S. C. 29138

Either party may change its address for notifications or communications at any time by notice to the other given in accordance with this paragraph.

9. Counterparts; Effective Date. This Settlement Agreement may be signed in counterparts with like force and effect as if all signatures were upon all copies. This Settlement Agreement shall come into effect upon the exchange of executed Signature Pages by the parties, which may be effectuated by their communications legal counsel. The date of such exchange shall be noted on the Signature Pages at the exchange thereof.

10. Entire Agreement. This Settlement Agreement constitutes the entire contract of the parties and sets forth all consideration by and between them.

AGREED AND CONTRACTED, in witness whereof the parties have executed this Settlement Agreement on the Signature Page which follows.

SIGNATURE PAGE

To That Certain Settlement Agreement
for
Dismissal of Competing Application
By and Between
Alexander Snipe, Jr., d/b/a Glory Communications
and
William K. Durst and William L. Faircloth, Jr.,
d/b/a Lexco Radio

WITNESSES:

**ALEXANDER SNIPE, JR.,
d/b/a GLORY COMMUNICATIONS:**

Angela T. Haggan
My Commission Expires: 3/17/92

Alexander Snipe Jr.
Alexander Snipe Jr.

**WILLIAM K. DURST and
WILLIAM L. FAIRCLOTH, JR.,
d/b/a LEXCO RADIO:**

William K. Durst,
Partner

Executed Signature Pages Exchanged
and the Foregoing Settlement Agree-
ment in Effect:

Date: February 4, 1992

Stephen T. Yelverton
Stephen T. Yelverton

Roy F. Perkins, Jr.
Roy F. Perkins, Jr.

SIGNATURE PAGE

**To That Certain Settlement Agreement
for
Dismissal of Competing Application
By and Between
Alexander Snipe, Jr., d/b/a Glory Communications
and
William K. Durst and William L. Faircloth, Jr.,
d/b/a Lexco Radio**

WITNESSES:

**ALEXANDER SNIPE, JR.,
d/b/a GLORY COMMUNICATIONS:**

Alexander Snipe, Jr.

**WILLIAM K. DURST and
WILLIAM L. FAIRCLOTH, JR.,
d/b/a LEXCO RADIO:**

William K. Durst

William K. Durst,
Partner

Paul B. Boken

PAUL B. BOKEN

Executed Signature Pages Exchanged
and the Foregoing Settlement Agree-
ment in Effect:

Date: *February 4* 1992

Stephen T. Yelverton

Stephen T. Yelverton

Roy F. Perkins, Jr.

Roy F. Perkins, Jr.

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D. C. 20554

In re Application of)	
)	
William K. Durst and)	File No. BPH-910228MB
William L. Faircloth,)	
d/b/a LEXCO RADIO)	
)	
For Construction Permit for a)	
New FM Broadcast Station at)	
South Congaree, S. C.)	

DECLARATION RE SETTLEMENT AGREEMENT

My name is William K. Durst. I am a partner in the above-styled application of William K. Durst and William L. Faircloth, d/b/a Lexco Radio (hereinafter, "Lexco"), for construction permit for a new frequency modulation (FM) broadcast station at South Congaree, South Carolina.

Lexco Radio has entered a Settlement Agreement for Dismissal of Competing Application (hereinafter, "Settlement Agreement") with Alexander Snipe, Jr., d/b/a Glory Communications (hereinafter, "Snipe"), mutually exclusive applicant under File No. BPH-910228MC. It calls for dismissal of the application of Lexco and, subject to certain conditions precedent, reimbursement by Snipe of Lexco's expenses reasonably and prudently incurred in the preparation and prosecution of its application and in the preparation and filing of the Settlement Agreement in an amount not exceeding \$10,000.

The Settlement Agreement states the entire agreement of the parties and all consideration of any and every type and character to be paid by Snipe to Lexco and its partners with respect to the dismissal of the application of Lexco.

Attachment A hereto lists expenses reasonably and prudently incurred by Lexco for the foregoing purposes, totalling \$9,734.63.¹ Pursuant to the Settlement Agreement, Lexco requests the Commission approve and authorize reimbursement to be paid to it in that amount.

Approval of the Settlement Agreement and dismissal of the application of Lexco will simplify hearing on the application of Snipe and the remaining competing application for the FM channel at South Congaree, minimizing the cost thereof to the applicants and the Commission, and expedite the provision of a new broadcast service at South Congaree.

The application of Lexco was not filed for the purpose of entering or effectuating a settlement, including that represented by the instant Settlement Agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed January 8, 1992.

W.K. Duff

¹ Exclusive of the hearing fee paid by Lexco, which it will request be reimbursed by the Commission.

William K. Durst and
William L. Faircloth,
d/b/a LEXCO RADIO

A handwritten signature in cursive script, appearing to read "William K. Durst", written over a horizontal line.

William K. Durst, Partner

COSTS INCURRED BY LEXCO RADIO

Consulting engineer (Declaration attached)	\$2,336.00
Legal counsel (Declaration attached)	5,111.21
FCC filing fee	2,030.00
Newspaper notice of application	202.52
Public file placement charge	50.00
Postage	<u>4.90</u>
	<u>\$9,734.63</u>

Note: the above is exclusive of the FCC hearing fee paid in the amount of \$6,760.00.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Application of

William K. Durst and
William L. Faircloth,
d/b/a LEXCO RADIO

File No. BPH-910228MB

For Construction Permit for a
New FM Broadcast Station at
South Congaree, S. C.

DECLARATION

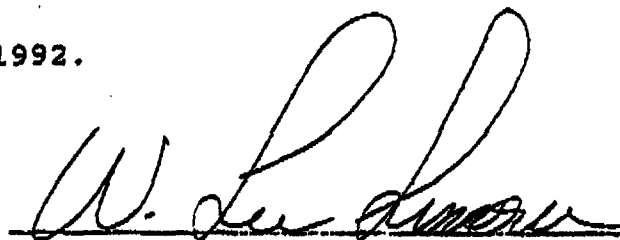
My name is W. Lee Simmons. I am a consulting radio engineer with offices at 1036 William Hilton Parkway, Suite 200F, Hilton Head Island, S. C.

I prepared the engineering section and exhibits for the above-styled application of William K. Durst and William L. Faircloth, d/b/a Lexco Radio, for construction permit for a new frequency modulation (FM) broadcast station at South Congaree, South Carolina.

My charge for the foregoing services was \$2,336. That was the customary and usual charge for work of that nature.

I declare under penalty of perjury that the foregoing is true and correct.

Executed February 4, 1992.


W. Lee Simmons

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Application of)	
)	
William K. Durst and)	File No. BPH-910228MB
William L. Faircloth,)	
d/b/a LEXCO RADIO)	
)	
For Construction Permit for a)	
New FM Broadcast Station at)	
South Congaree, S. C.)	

DECLARATION

My name is Roy F. Perkins, Jr. I am an attorney at law with office at 1724 Whitewood Lane, Herndon, Virginia 22070.

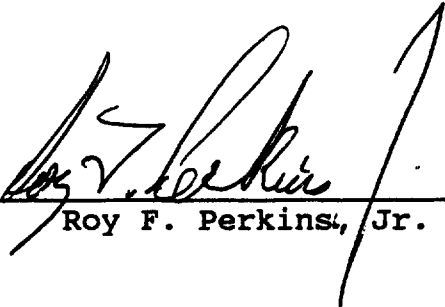
I prepared the non-engineering section and exhibits for the above-styled application of William K. Durst and William L. Faircloth, d/b/a Lexco Radio, for construction permit for a new frequency modulation (FM) broadcast station at South Congaree, South Carolina. I reviewed and digested mutually exclusive applications for the same FM channel, conducted settlement negotiations, and prepared a settlement agreement and related documents for dismissal of the Lexco application and reimbursement of expenses incurred respecting it. I provided the applicant with incidental services and information and advice re the foregoing and related matters.

My charges for the foregoing services and incidental expenses incurred total \$5,111.21. These charges are the customary and usual charges of the undersigned for work of the nature

provided.

I declare under penalty of perjury that the foregoing is true and correct.

Executed February 4, 1992.



Roy F. Perkins, Jr.

DECLARATION

I, Alexander Snipe, Jr., d/b/a Glory Communications declare that I am an individual applicant for Channel 237A in South Congaree, South Carolina.

Pursuant to a settlement agreement, a copy of which is attached to the Joint Request, Snipe and William K. Durst and William L. Faircloth, d/b/a Lexco Radio have agreed that Snipe will pay Lexco its reasonable and prudent expenses of prosecuting its application, as approved by the Commission, in return for dismissal with prejudice of the Lexco application. This payment is contingent upon the grant of my application. Except for the agreement set out in the settlement agreement, I have neither promised nor paid any consideration to Lexco or its principals, or has been promised or received any consideration, in exchange for their promise to dismiss.

I believe that grant of the Joint Request will serve the public interest. It will conserve the resources of the parties and the Commission. Additionally, it will hasten the inauguration of a new commercial FM radio broadcast service to South Congaree, South Carolina, a result which is in the public interest.

I did not file my application for the purpose of securing or carrying out a settlement agreement. Furthermore, I have no basis to believe that Lexco filed its application for such purposes.

DECLARATION
Page 2

The foregoing statements which are made under penalty of perjury are true and correct to the best of my personal knowledge and belief.

1/2/92
Date

tsb/sty/styl3
File No. 9841.002

Alexander Snipe, Jr.
Alexander Snipe, Jr.
d/b/a Glory Communications

SWORN to before me this
2nd day of January, 1992.

Angela T. Hagan
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3/17/95

Before the

Federal Communications Commission

Washington, D.C. 20554

In re Application of)

William K. Durst and)
William L. Faircloth,)
d/b/a LEXCO RADIO)

File No. BPH-910228MB

For Construction Permit for a)
New FM Broadcast Station at)
South Congaree, S. C.)**DECLARATION OF NO CONSIDERATION**

My name is William K. Durst. I am a partner in the above-styled application of William K. Durst and William L. Faircloth, d/b/a Lexco Radio, for construction permit for a new frequency modulation (FM) broadcast station at South Congaree, South Carolina.

Lexco Radio is requesting dismissal of its above-styled application pursuant to a "Settlement Agreement for Dismissal of Competing Application" with Alexander Snipe, Jr., mutually exclusive applicant under File No. BPH-910228MC.


Neither Lexco Radio nor either of its partners have, directly or indirectly, been paid or promised consideration of any kind (including an agreement for a merger of interests) by

Valentine Communications, Inc., mutually exclusive applicant under File No. BPH-910228MD, or any of its principals, for, or in connection with, the request for dismissal of the application of Lexco Radio.

I declare under penalty of perjury that the foregoing is true and correct.

Executed February 1, 1992.

William K. Durst and
William L. Faircloth,
d/b/a **LEXCO RADIO**

A handwritten signature in cursive script, appearing to read "William K. Durst", written over a horizontal line.

William K. Durst, Partner